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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/540,980	08/09/2006	Shinichi Terada	2691-000022/US	9530
30593 7590 11/04/2008 HARNESS, DICKEY & PIERCE, P.L.C. P.O. BOX 8910 RESTON, VA 20195				
EXAMINER				
KAO, CHIH CHENG G				
ART UNIT		PAPER NUMBER		
2882				
MAIL DATE		DELIVERY MODE		
11/04/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/540,980

Applicant(s)

TERADA, SHINICHI

Examiner

Chih-Cheng Glen Kao

Art Unit

2882

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 15 October 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____
Claim(s) objected to: 12 and 16
Claim(s) rejected: 9-11 and 13-15
Claim(s) withdrawn from consideration: _____

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____

/Chih-Cheng Glen Kao/
Primary Examiner, Art Unit 2882

Continuation of 11, does NOT place the application in condition for allowance because:

Regarding at least claims 9 and 15, Applicant argues that Koppel et al. fails to disclose irradiating the insulator film with X-rays from the insulator film's surface side at an incident angle which is set to be larger than a total-reflection critical angle of the insulator, but less than 1.3 times a total-reflection critical angle of the substrate. The Examiner disagrees. As seen in Figure 3, Koppel et al. shows two critical angles 306 and 308, which correspond to the critical angle of the insulator (fig. 3, #306) and the critical angle of the substrate (fig. 3, #308). As seen in Figure 3, the reflection angle increases as the incident angle is changed (fig. 4, #406; and col. 4, lines 7-25) as further explained by Koppel et al. Since the angle of incidence goes through a range of angles, as evidenced by the graph in Figure 3, Koppel et al. will necessarily irradiate the insulator film with X-rays from the insulator film's surface side at an incident angle which is set to be larger than a total-reflection critical angle of the insulator, but less than 1.3 times a total-reflection critical angle of the substrate, at some point in that graph of Figure 3. Therefore, Koppel et al. necessarily discloses that portion of the claim.

Furthermore, with regards to claim 15, Applicant submits that there is an inconsistent statement in suggesting that Koppel both does and does not disclose a point focus X-ray source. The Examiner disagrees with this contention. As seen on page 13 of the Office Action mailed July 7, 2008, the Examiner stated that Koppel et al. (i.e., US 6507634) does not disclose a point focus X-ray source. The Examiner also stated that Koppel (i.e., US 5619548) does disclose a point focus X-ray source. However, the Examiner never stated that Koppel (i.e., US 5619548) does not disclose a point focus X-ray source. Therefore, the Examiner only stated that Koppel (i.e., US 5619548) discloses a point focus X-ray source.

Applicant also argues that Koppel only teaches an X-ray source, not a point focus X-ray source. The Examiner disagrees. As seen in Figure 4 of Koppel, the X-ray beams of the X-ray source (fig. 4, #31) start from a point focus at the X-ray source. Therefore, Koppel does disclose a point focus X-ray source.

In conclusion, Applicant's arguments are not persuasive, and the respective claims remain rejected.